

AMENDED IN SENATE MAY 28, 2010

AMENDED IN SENATE MAY 12, 2010

AMENDED IN SENATE APRIL 5, 2010

**SENATE BILL**

**No. 1355**

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**Introduced by Senator Wright**

February 19, 2010

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An act to add Section 4007.5 to the Family Code, relating to child support.

LEGISLATIVE COUNSEL'S DIGEST

SB 1355, as amended, Wright. Child support: suspension of support order.

Existing law provides that if a court orders a person to make payments for child support until the occurrence of a specified event, the obligation of the person ordered to pay support terminates on the happening of the contingency.

This bill would provide that the obligation of a person to pay child support pursuant to an order that is being enforced by a local child support agency under Title IV-D of the Social Security Act is suspended for the period of time *exceeding 90 days* in which the obligor is incarcerated or involuntarily institutionalized, with specified exceptions. The bill would require that, upon the release of the obligor, the obligation to pay child support immediately resume in the amount otherwise specified in the child support order prior to the suspension of that obligation. The bill would require the court to provide notice to the parties of the support obligation suspension at the time the order is issued. The bill would authorize an obligor, upon release from incarceration or involuntary institutionalization, to petition the court

for an adjustment of the arrears pursuant to the suspension of the support obligation. These provisions would apply to all child support orders issued and all modifications of child support orders requested on or after January 1, 2011.

The bill would also require the Judicial Council to proscribe forms necessary for the implementation of the above-described provisions, including forms for a petition to adjust arrears.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 4007.5 is added to the Family Code, to  
2     read:  
3     4007.5. (a) Every money judgment or order for support of a  
4     child that is being enforced by a local child support agency under  
5     Title IV-D of the Social Security Act (42 U.S.C. Sec. 651 et seq.)  
6     shall provide the following:  
7     (1) The obligation of the person ordered to pay support shall be  
8     suspended for any period exceeding ~~30~~ 90 consecutive days in  
9     which the person ordered to pay support is incarcerated or  
10    involuntarily institutionalized.  
11    (2) The suspension of the support obligation shall only apply  
12    for the period of time during which the obligor is incarcerated or  
13    involuntarily institutionalized, after which the obligation shall  
14    immediately resume in the amount otherwise specified in the child  
15    support order.  
16    (b) The court shall provide notice to the parties of the support  
17    obligation suspension provided in subdivision (a) at the time the  
18    order is issued.  
19    (c) Upon release from incarceration or involuntary  
20    institutionalization, an obligor may petition the court for an  
21    adjustment of the arrears pursuant to the suspension of the support  
22    obligation authorized in subdivision (b). The obligor must show  
23    proof of the dates of incarceration or involuntary  
24    institutionalization, as well as proof that during that time, the  
25    obligor was unable to earn any income. The obligor shall serve  
26    copies of the petition to the support obligee and the local child  
27    support agency, who may file an objection to the obligor's petition

1 with the court. An obligor's arrears shall not be adjusted until the  
2 court has approved the petition.

3 (d) Notwithstanding subdivision (a), the court may deny the  
4 obligor's petition if it makes a finding of one of the following:

5 (1) The obligor had the means to pay support while incarcerated  
6 or involuntarily institutionalized.

7 (2) The obligor was incarcerated or involuntarily  
8 institutionalized for any offense constituting domestic violence,  
9 as defined in Section 6211, against the support obligee or supported  
10 child, or for any offense that could be enjoined by a protective  
11 order pursuant to Section 6320, or as a result of his or her failure  
12 to comply with a court order to pay child support.

13 (e) For purposes of this section, "incarcerated or involuntarily  
14 institutionalized" includes, but is not limited to, involuntary  
15 confinement to a state prison, county jail, juvenile facility operated  
16 by the Division of Juvenile Facilities in the Department of  
17 Corrections and Rehabilitation, or a mental health facility.

18 (f) For purposes of this section, "suspend" means that the child  
19 support order is modified and set to zero dollars (\$0) for the period  
20 in which the obligor is incarcerated or involuntarily  
21 institutionalized.

22 (g) This section applies to all child support orders issued and  
23 all modifications of child support orders requested on or after  
24 January 1, 2011.

25 (h) The Judicial Council shall proscribe forms necessary for the  
26 implementation of this section, including forms for a petition to  
27 adjust arrears.